judge I would touch on it briefly. The contention of defendant is that the rule in *Clayton's* case[24] is relevant if the court hold that each separate guarantee constituted a separate loan. Then whatever payment made would go to wipe off the earlier loan thus rendering defendant's guarantee ineffective. This rule is codified in section 62 of the Contracts Act 1950 which is set out in full in the judgment of the learned judge. Defendant's contention has no merit as clauses 3 and 4 make it unequivocally clear that the guarantee is a continuing guarantee. Under clause 10 although the ultimate liability of the surety cannot exceed the limit the guarantee is to be treated as a guarantee for the whole principal moneys and interest owing. The learned judge clearly had clause 10 in mind when he said just before he concluded his judgment that "It is an established rule that a continuing guarantee is not affected by any payment in for it is framed to secure the final debit balance." In the Encyclopaedia of Forms and Precedents, 4th Edition, Volume 2 at page 764 it is stated, with reference to the rule in *Clayton's* case[24] that: —

"In such cases the repayment by credit items would be treated as appropriated to the earlier debits to the account, unless the form of security on which a banker relies indicates that the security is "by way of continuing security" or relates to the balance at any one time outstanding" or in some similar manner clearly evinces the intention that the amount secured is the net balance upon the account between the banker and the borrower."

Explaining the difference between specific and continuous guarantees in relation to *Clayton's* case,[24] the learned authors in Sheldon's Practice and Law of Banking, 10th Edition, at page 338 state that: —

"A continuing guarantee is not affected by any payment in, for it is framed to secure the final debit balance. This liability of the guarantor to be answerable for the final balance must be clearly stated in the guarantee, because, unless the contrary is explicitly stated in the memorandum, the law assume that the guarantee covers nothing but the debt due at the time the guarantee was entered into."

With respect, the learned judge was right to reject the defendant's contention as the liability was expressly stated in the guarantee. Further, as the learned judge pointed out, clause 4 itself provides that that guarantee shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or thereafter held by the plaintiff.

For reasons given, I would dismiss the appeal with costs both here and below. Deposits to defendant against taxed costs.

Suffian L.P.: My brother Wan Suleiman F.J. who is absent wishes me to say that he concurs.

The order of the court is that this appeal be dismissed with costs and that the appellant's deposit be paid to the respondent against its taxed costs.

Appeal dismissed.

Solicitors: *Heng Cheng Swee & Co.; Chung & Huang.*

H.H. COMPANY SDN. BHD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) January 19, 1976]
[Kuala Lumpur — Federal Court Civil Appeal No. 102 of 1975]

Revenue Law — Income Tax — Company carrying on business in Malaysia and in Singapore — Whether Company can set off losses in Singapore against Malaysian income — Double Taxation Relief (Republic of Singapore) Order, 1966 — Income Tax Act, 1967, ss. 3 and 132.

The appellants had their head office in Kuala Lumpur and a branch office in Singapore. For the year of assessment 1968, the appellants had an income of $31,415 from Malaysia but suffered a loss of $538,335 attributable to its business in Singapore. The appellants sought to set off their loss in Singapore against their Malaysian income. The Special Commissioners held that the appellants were entitled to have their Singapore loss set off against their income derived from Malaysia but on a case stated to the High Court it was held that they were not so entitled. On appeal to the Federal Court.

Held, dismissing the appeal: the appellants were not entitled to set off the Singapore losses from their Malaysian income, as to do so would be to allow double deduction.

Cases referred to:-

(1) *U.N. Finance Bhd.* v. *Director-General of Inland Revenue* [1975] 1 M.L.J. 109; [1975] 2 M.L.J. 224.
(2) *Whimster & Co. Ltd.* v. *I.R.C.* 12 T.C. 813, 823.
(3) *Odeon Associated Theatres Ltd.* v. *Jones* [1971] 2 All E.R. 407, 414.
(4) *Ostimie (H.M. Inspector of Taxes)* v. *Australian Mutual Provident Society* 38 T.C. 492, 517; [1960] A.C. 459.

FEDERAL COURT.

S. Woodhull for the appellant.

Zulkifli bin Mahmood (Senior Federal Counsel) for the respondent.

Suffian L.P.: There are two separate judgments in this appeal. First I shall read mine, and then that of my brother the Chief Justice of Borneo who is absent.

Suffian L.P.: H. H. Company Sdn. Bhd. is a rubber dealer. I shall call it the taxpayer. It had its head office at railway godown No. xx, Kuala Lumpur. It also had a branch at xx, Cecil Street, Singapore, through which it carried on its business in Singapore.

It is ordinarily resident in Malaysia within the meaning of section 9 of the Income Tax Act, 1967, and it carried on business in Singapore through a permanent establishment within the meaning of Article II, 1(j) of the Double Taxation Agreement dated October 19, 1966 (published as P.U. 385 dated October 27, 1966). I shall refer to this Agreement simply as the Agreement.

We are concerned with the tax liability of the taxpayer for the year of assessment 1968. For that year the taxpayer had an income of $31,415 from Malaysia, but suffered a loss of $538,335 attributable to its business carried on through its Singapore branch.

Under paragraph 7 of schedule 7 to the Income Tax Act, 1967, the taxpayer elected that bilateral credit (*i.e.*, credit in respect of Singapore tax) should

not be allowed against Malaysian tax payable by it for the year of assessment 1968.

When ascertaining the taxpayer's total income for the year of assessment 1968, the Director-General of Inland Revenue declined to set off the Singapore loss against the income derived from Malaysia. The taxpayer appealed to the Special Commissioners who decided in favour of the taxpayer, namely that it is entitled to have its Singapore loss set off against its income derived from Malaysia under section 44(2) of the Income Tax Act, 1967.

The Revenue asked the Special Commissioners to state a case for the opinion of the High Court.

On July 11, 1975, the High Court decided against the taxpayer, namely that it is not entitled to have its Singapore loss set off against its income derived from Malaysia.

The taxpayer has appealed to us.

It is submitted on its behalf that the applicable legislation on which this appeal turns is the Income Tax Act, 1967, and the Agreement.

Before the Special Commissioners the Revenue contended that the applicable statute was the Income Tax Ordinance, 1947, and not, as contended by the taxpayer, the Income Tax Act, 1967. But at the hearing before the High Court, the Revenue reversed this contention and accepted that the Income Tax Act, 1967, was the applicable statute.

Thus in this appeal there is agreement both as to the facts and as to the legislation applicable.

The issue in this appeal is whether the taxpayer may set off its Singapore loss against its Malaysian income. The taxpayer contends that it can. The Revenue on the other hand contends that it cannot. As has been seen, both rely on the same legislation. So the dispute turns on the meaning to be given to the Agreement and the relevant provisions of the Income Tax Act, 1967.

The arguments on behalf of the taxpayer may be briefly summarised as follows:—

(1) At the relevant time under section 3(a) of the Act, tax is payable upon its income from wherever derived, that is upon its world income. In computing its world income, loss suffered in Singapore should be deducted from profit made in Malaysia — else, how can its world income be determined?

(2) According to section 44(2) of the Act, loss may be deducted and this must include, it is submitted, loss suffered in Singapore.

(3) Certain deductions are not allowed and these are enumerated in section 39 of the Act. Loss suffered in Singapore is not included; therefore it may be set off against Malaysian profit.

(4) According to the ordinary principles of commercial accounting, all gains and losses must be brought into account when computing income.

(5) The Agreement and its enabling authority (section 132 of the Act) provide for *relief* against double taxation, such relief is only in respect of *profits* made and taxed in Singapore. As the taxpayer has not claimed relief against double taxation, the Agreement does not apply. Therefore, it is submitted, only sections 44(2) and 39 apply, so that the Singapore loss may be set off against Malaysian income.

With all due respect to Mr. Woodhull, I do not agree. In my opinion the loss suffered by the taxpayer in Singapore cannot be set off against its Malaysian income.

The profits of the main branch in Malaysia are taxable in Malaysia in accordance with Malaysian law. The profits of its Singapore branch are taxable in Singapore in accordance with Singapore law. See paragraph 1 of Article XVII of the Agreement. (No further tax is imposed in Malaysia on the profits of the Singapore branch when remitted to Malaysia). How are the profits of the main branch in Malaysia ascertained? — by deducting Malaysian losses from Malaysian gains. How are profits of the Singapore branch ascertained? — by deducting Singapore losses from Singapore gains. I do not think that for this purpose it is correct to deduct both Singapore and Malaysian losses from Singapore gains. Malaysian losses have already been taken into account when ascertaining Malaysian profits. To allow Malaysian losses to be deducted from the Singapore gains would be to deduct them twice, once in Malaysia and once in Singapore.

Similarly I do not think that for the purpose of ascertaining its Malaysian profits it is correct to deduct Singapore losses from Malaysian gains. Singapore losses have already been deducted in Singapore from Singapore gains when ascertaining Singapore profits. To deduct them again in Malaysia from Malaysian gains for the purpose of ascertaining Malaysian profits would be to allow double deduction.

The above would appear to be consistent with ordinary accounting principles.

I am fortified in my view by paragraphs 2 and 3 of Article IV of the Agreement. The two paragraphs provide in effect that the Singapore branch must be treated as if it is an enterprise distinct and separate from the main branch in Kuala Lumpur and that when ascertaining the profits of the Singapore branch there shall be allowed all expenses which would be deductible if the Singapore branch were an independent enterprise, *i.e.*, distinct and separate from the main branch in Malaysia.

All this is quite contrary to section 3(a) of the Act which at the material time provided (as already stated) that the taxpayer should be taxed on its world income, *i.e.*, on both its Malaysian and Singapore income, not only on its Malaysian income, and it would appear therefore that its Singapore losses must be set off against its Malaysian profits. But it appears that that would be so only in relation to countries with which Malaysia does not have a double taxation agreement, because section 3(a) is expressly made subject to the Act, and section 132 provides that a Double Taxation Agreement may override the Act, and the 1966 Agreement has overridden the Act, in so far as the losses of the taxpayer's Singapore branch are concerned. Also, the Agreement itself says — and it is

perfectly proper for it to do so — that it may contain provisions contrary to the Act; see paragraph 1 of Article XVII.

It is argued on behalf of the taxpayer that the Agreement does not apply because section 7 of schedule 7 to the Act allows the taxpayer not to claim any benefit from the Agreement and (it is not disputed) the taxpayer has not claimed any relief under it. With respect, there seems to me nothing in the Agreement which says that its provisions apply only to persons who claim relief under it. On the contrary it would appear to apply (and I rule that it does apply) to all Malaysian enterprises with a permanent establishment in Singapore, irrespective of whether or not they claim relief under the Agreement. It would appear to me that section 7 of schedule 7 has no bearing on the question in issue here. On the contrary, section 132 itself says that when there is a double taxation agreement its provisions shall have effect in relation to tax under the Act, notwithstanding anything in any written law.

I would therefore dismiss this appeal with costs.

Lee Hun Hoe C.J. (Borneo) (read by Suffian L.P.): This is an appeal against the decision of Chang Min Tat, J. in setting aside the deciding order of the Special Commissioners and ordering the assessment for income tax in respect of appellant company to be restored.

Facts as agreed are set out at page 69 of the Appeal Record as follows:—

"(i) H. H. is a company incorporated in Malaysia having its head office at Railway Godown No. xx, Kuala Lumpur. It has also a Branch at xx, Cecil Street, Singapore 1, through which it carried on its business in Singapore.

(ii) The Company is ordinarily resident in Malaysia under the provisions of the Income Tax Act 1967.

(iii) The agreed income/loss of the company for the year of Assessment 1968 is as follows:—

Income derived from Malaysia	$ 31,415
Loss attributable to business carried on in Singapore through Singapore Branch	$538,335

(iv) It is the contention of the Appellant company that the Singapore loss of $538,335 is allowable in assessing the company's tax liability for the Year of Assessment 1968.

(v) It is the contention of the Director General of Inland Revenue that the Singapore loss of $538,335 is not an allowable deduction for the purposes of assessing the company's tax liability for the Year of Assessment 1968.

(vi) The question to be decided is whether or not the Singapore loss of $538,335 is admissible in computing the company's Malaysian tax liabilities for the Year of Assessment 1968."

The relevant legislation to be considered are (a) the Income Tax Act, 1967 and (b) the Double Taxation Relief (Republic of Singapore) Order, 1966 (hereinafter referred to as DTA 1966). The Singapore branch of the appellant company sustained loss to the tune of $538,355. The only issue before the court is whether the Singapore loss is an allowable deduction in computing the appellant company's tax liabilities for the year of assessment 1968.

The learned Judge based his judgment on the reasons given by him in the Federal Court case of *U.N. Finance Berhad* v. *Director-General of Inland Revenue*[1] on July 3, 1975. The High Court decision is reported in [1975] 1 M.L.J. 109. Both Suffian L.P. and H. S. Ong F.J. concurred with the learned Judge. There this court upheld Abdul Hamid J. (1) in confirming the determination of the Special Commissioners that the profits from the sale of certain investments were not capital gains but a trading income and, therefore, assessable to tax, and (2) in overruling the decision of the Special Commissioners that the loss sustained by the taxpayer's Singapore branch could be brought in to determine its chargeable income in Malaysia.

We are concerned with the second limb, that is, the loss incurred by the Singapore branch. Briefly, the facts in that case are that the taxpayer is a wholly-owned subsidiary of the United Malayan Banking Corporation Berhad which is a finance company. It commenced business in Malaysia in 1964 and its sister branch in Singapore in 1965. Up to 1969 it bought and sold shares in eleven companies both private and public. Some shares were sold at profits and others were transferred to its parent company and to the United National Finance (Singapore) Ltd, its sister branch in Singapore. The profits realised by the taxpayer were used in the course of its business as a finance company. It was contended that the profits which had been assessed to tax for the years of assessment 1968 and 1969 were capital gains and not trading income as the shares formed part of a holding which was purchased and held as investment. The Special Commissioners considered that in buying and selling shares the taxpayer was carrying on a business in dealing in shares as an adventure or concern in the nature of trade. They, therefore, held that the profits were assessable to tax under section 4(a) of the 1967 Act. This was upheld by both Abdul Hamid J. and this court. In respect of the second limb the factum or quantum of loss sustained by the Singapore branch was not in dispute though the figure of losses was not disclosed. The Special Commissioners held that the taxpayer was entitled to deduct the Singapore losses from its income derived in Malaysia. Abdul Hamid J. considered that the Special Commissioners had erred in law as the net effect of their decision would result in the Singapore losses to be taken into consideration twice, once in Singapore and again in Malaysia. Chang Min Tat J. agreed with this view and dismissed the appeal.

In that case the taxpayer argued that the DTA 1966 for the year of assessment, 1968 had no relevance whatsoever as it had made no profit but incurred losses. There was no income for which it could claim any relief. As it incurred losses, it could claim no relief. The DTA 1966 did not, therefore, come into play. Encik Woodhull for appellants also dealt with this point in another way. He said there was no conflict between the domestic charging provisions of Malaysia and Singapore calling for the application of the DTA 1966. In the year of assessment 1968 the Singapore taxing authority did not seek to tax the Singapore branch profits. The simple answer is that there was no profit to be taxed. He conceded that had there been profits in Singapore the liability of those profits to tax would have been governed by Article IV of the DTA 1966. There being no liability to tax in Singapore, he, therefore, submitted that the DTA 1966 had no application. I do not agree.

At this stage it would be convenient to refer to relevant provisions of section 3 of the 1967 Act which reads:—

"3. Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of assessment—

(a) in the case of a person ordinarily resident for the basis year for the year of assessment, upon his income from wherever derived; . . . ."

That this section applied to a company is clear by virtue of section 2 which defines "person" to include a company.

Encik Woodhull pointed out that the scope of assessment had changed. Under the Income Tax Ordinance 1947 tax was exigible on the income "accruing in or derived from the States of Malaya or received in the States of Malaya from outside the States of Malaya" (see section 10(1) of the Ordinance). By the 1967 Act, repealing the 1947 Ordinance, in the case of a person ordinarily resident in Malaysia, as in the case of appellant company, tax is chargeable for each year of assessment "upon income wherever derived." (See section 3 of the 1967 Act). The change from what is commonly described as the Derivation Scope under the 1947 Ordinance to the World Income Scope under the 1967 Act occurred while the DTA 1966 was still in force. The provisions of the DTA 1966 are meant to afford relief from double taxation, particularly profits made in Singapore. Appellants claimed no relief from double taxation as it had made no profit. There is no provision in the DTA 1966 disallowing losses. It is not concerned with the computation of income which continues to be governed by the respective tax laws of Malaysia and Singapore. In computing the profits of the appellant company, certain principles have to be observed. It was submitted that the ordinary principle of commercial accounting which require the bringing into account of all gains or losses should be applied. The observations of Lord Clyde in *Whimster & Co. Ltd.* v. *I.R.C.*[2] and of Pennycuick V-C in *Odeon Associated Theatres Ltd.* v. *Jones*[3] were referred to in support. The contention of appellants is that section 44(2) of the 1967 Act specifically provides for deduction of loss, therefore in computing the income the losses incurred by the Singapore branch have to be brought into account under the 1967 Act on the basis of the World Income Scope. This argument seems to find favour with the Special Commissioners. They correctly considered the DTA 1966 and the 1967 Act together. They held that as section 3 of the 1967 Act provided for the imposition of income tax on a person ordinarily resident in Malaysia upon his income wherever derived, therefore the appellant company was entitled to have the Singapore losses set off against their income derived from Malaysia under section 44(2) of the 1967 Act. Chang Min Tat J. was not impressed by the contention for the reasons he gave when sitting in this court.

The DTA 1966 is not a piece of Malaysian domestic legislation but a contract entered into between the Malaysian Government and the Singapore Government whereby arrangements are made for the benefits of taxpayers in both countries, such as appellant company, "with a view to affording relief from double taxation." Section 132 of the 1967 Act provides that if any double taxation arrangements have been concluded and by statutory order (published as P.U. 385 dated October 27, 1966), the arrangements afford relief from double taxation, those arrangements shall have effect in relation to tax under the 1967 Act, notwithstanding anything in any written law. However, paragraph 1 of Article XVII of the DTA 1966 expressly provides that:—

"The laws of each Contracting State shall continue to govern the taxation of income in that State except where the express provision to the contrary is made in this Agreement."

There are two material provisions in Article IV, namely paragraphs 1(a) and 2 which state as follows:—

"The profits of a Malaysian enterprise shall not be taxable in Singapore unless the enterprise carries on business in Singapore through a permanent establishment situated in Singapore. If the enterprise carries on business as aforesaid, tax may be imposed in Singapore on the profits of the enterprise but only on so much of them as is attributable to that permanent establishment which are remitted to Malaysia."

"Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing independently with the enterprise of which it is a permanent establishment."

These provisions apply in regard to the basis year of 1967 for the year of assessment 1968. Encik Zulkifli for the Revenue contends that the express provisions set out in Article IV of the DTA 1966 is that a Malaysian enterprise which carries on a business through its branch in Singapore could claim relief from double taxation if it could be established that that branch is a permanent establishment. In other words, tax shall not be imposed in Malaysia in respect of the profits made by the permanent establishment which are remitted to Malaysia. It is not in dispute in this case that the Singapore branch qualified as a permanent establishment. The Singapore branch must, therefore, be treated as a distinct and separate enterprise from its head office in Malaysia. As stated previously Article XVII of the DTA 1966 provides that the laws of each Contracting State shall continue to govern the taxation of income in that State except *where express provision to the contrary is made in the DTA 1966.* Express provisions contained in Article IV of the DTA 1966 indicate that the Singapore branch is to be treated as a distinct and separate enterprise. The result is that any chargeable income derived from Singapore will have to be the concern of the Singapore tax authority. Encik Zulkifli, therefore, submitted that the introduction of the DTA 1966 would not expose any chargeable income derived by Singapore branch in this case to the World Income Scope for the purpose of section 3 of the 1967 Act. In other words, the whole basis of chargeable income from World Income Scope is transformed to that of the Derivative Scope.

Encik Woodhull says that the only provision in the DTA 1966 is for relief of profits and nothing is said about disallowing losses. He disagrees with the contention of the Revenue that the DTA 1966 denies the appellant company relief for the losses incurred by the Singapore branch in computing its income taxable in Malaysia for the year of assessment 1968.

The Revenue relies much on the statement of principle in the speech of Lord Radcliffe in *Ostime (H.M. Inspector of Taxes)* v. *Australian Mutual Provident Society*[4]: —

"Bilateral agreements for regulating some of the problems of double taxation began, at any rate so far as the United Kingdom was concerned, in 1946. The form employed, and for obvious reasons similar forms and similar language are employed in all agreements, is derived, I believe, from a set of model clauses proposed by the fiscal commission of the League of Nations. The aim is to provide by treaty for the tax claims of two governments both legitimately interested in taxing a particular source of income either by resigning to one of the two the whole claim or else by prescribing the basis on which the tax claim is to be shared between them."

The Revenue also relied on section 132 of the 1967 Act. But, appellant contends that section 132(1) refers to the double taxation arrangements as affording relief from double taxation to specific provisions which may be included in the double taxation arrangement, itemised in sub-section (4). These arrangements are all directed at relieving income from tax or declaring which country is to tax which income. He says nowhere in the Malaysian domestic legislation or in the DTA 1966 is there any suggestion that the purpose or effect of the DTA 1966 is to tax in one country income which would not otherwise be taxable under the domestic legislation. Paragraphs 1(a) of Article IV of the DTA 1966 makes it clear that no further tax shall be imposed in Malaysia in respect of the profits of the permanent establishment which are remitted to Malaysia. If the DTA 1966 were not in existence then the profits remitted would be subject to tax in Malaysia as income. When applying DTA 1966 the provisions of section 132 of the 1967 Act become significant. Section 132 says that "as long as the order remains in force, those arrangements shall have effect in relation to tax under this Act notwithstanding anything in any written law." This means that the DTA 1966 may override the 1967 Act.

Section 40 of the 1967 Act tells what constitutes adjusted loss from a business. The DTA 1966 could vary the mode of taxation in Malaysia or Singapore. For instance, the profits which a Malaysian enterprise derives from Singapore from the operation of ships or aircraft shall be exempted from Singapore tax vide Article VI of the DTA 1966. The relief granted under DTA 1966 is in the form of an exemption by the Malaysian authority in respect of income tax payable in Singapore which would otherwise be taxed twice, that is, once in Singapore and again in Malaysia. As the DTA 1966 has varied the mode of taxation in Malaysia it is submitted that section 40 must also be read as varied by the statute. I doubt the deduction of a loss or losses incurred in Singapore can be allowed when computing tax liability in Malaysia for the simple reason that the loss or losses cannot be said to be attributable to activities in Malaysia. Consequently, the losses incurred by the Singapore branch had to be disregarded in computing the appellant company's profits in Malaysia.

Income attributable to activities in Singapore of the Singapore branch, being a permanent establishment, should be treated as a distinct and separate enterprise subject to Singapore tax law. This is the implication derived from reading paragraph 1 of Article XVII and paragraph 2 of Article IV of the DTA 1966. Whether the Singapore branch makes profits or incurs losses, in assessing tax in Singapore the chargeable income would have to be computed in accordance with the Singapore tax law. The profits after such taxation if remitted to Malaysia would not be taxed again in Malaysia. That is the measure of relief provided by the DTA 1966. There is no relief for loss. Appellants cannot try to have their losses incurred by the Singapore branch deducted from income derived in Malaysia. This would mean the losses are twice deducted, once in Singapore and again in Malaysia. As Chang Min Tat J. said appellants could not eat their cake and keep it at the same time. They cannot have two bites at the cherry.

With respect, the learned Judge is right to hold that the losses attributable to activities in Singapore of the Singapore branch could not be deducted in computing the appellant's tax liability in Malaysia for the year of assessment 1968. I would dismiss the appeal with costs here and below. Deposit to respondent against taxed costs.

Suffian L.P.: My brother Wan Suleiman F.J. who is absent wishes me to say that he concurs.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

IBRAHIM BIN HAJI KARIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdoolcader J.) March 7, 1975]
[Ipoh — Miscellaneous Criminal Application No. 4 of 1975]

Criminal Law and Procedure — Applicant charged and convicted for criminal breach of trust — Appeal against conviction on question of fact and dismissed by the court — Application to reserve certain questions for the decision of the Federal Court — Administration of Muslim Law Enactment, 1965, ss. 147, 164 and 177 — Courts of Judicature Act, 1964, s. 66(1).

The applicant was convicted on a charge of criminal breach of trust of money entrusted to him as a servant in the employment of the Majlis Ugama and Adat Melayu, Perak. His appeal against the conviction was on question of fact and was dismissed by the court. The applicant then applied to the court to reserve certain questions for the decision of the Federal Court. The application was made under section 66(1) of the Courts of Judicature Act, 1964.

Held, dismissing the application: (1) under section 66 of the Courts of Judicature Act, 1964 reference to the Federal Court must be on a question of law of public interest which has arisen in the course of the appeal and the determination of which by the judge has affected the event of the appeal. On this ground alone the application should be dismissed in limine as the questions sought to be reserved for the decision of the Federal Court did not arise and were not determined in the course of the appeal but would appear to be only an afterthought on the part of the applicant in an indirect attempt to re-appeal against and reopen the final determination of his conviction by the court;

(2) there was no substance whatsoever in the matters purportedly raised by the questions.

Case referred to:-

(1) *Tan Yin Yen* v. *Public Prosecutor* [1973] 2 M.L.J. 143.

CRIMINAL APPLICATION.

J. S. Sandu for the applicant.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the respondent.